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| <p>1 D. Larue 2 GAAS. 3 Q. But this is neither to GAAS or to 4 GAAP, it's to typical auditing procedures, so 5 paragraph 7 has nothing to do -- you were 6 expressing no opinion as to whether or not 7 KPMG Belgium would or would not have 8 typically reviewed the loan files in Belgium, 9 correct?</p> <p>10 MR. BUTLER: Objection to form. 11 A. That's not correct. 12 Q. That's not correct? 13 A. No, the financial statements I am 14 looking at and reviewed are not the financial 15 statements compiled under Belgium GAAP or 16 audited under Belgium GAAS.</p> <p>17 My report focuses on the financial 18 statement filed under U.S. GAAP which require 19 the application of U.S. GAAS.</p> <p>20 Q. Okay. But that was a different -- 21 that's the answer to a different question.</p> <p>22 Here is my question. You are not 23 expressing -- you say, Furthermore, there was 24 no reason to expect that this loan 25 documentation or any other funding</p> | <p>1 D. Larue 2 A. Prohibited by whom? 3 Q. U.S. GAAS. 4 A. U.S. GAAS, as far as I know, 5 doesn't prohibit the reviewing of any 6 document that an auditor would like to review 7 or considers necessary to review.</p> <p>8 Q. So you say there was no reason to 9 expect that this loan documentation or any 10 other funding documentation would have been 11 reviewed by KPMG, but is it fair to say that 12 you don't know what is the typical auditing 13 in Belgium of software companies in Belgium?</p> <p>14 A. That's correct.</p> <p>15 Q. And so you do not know, do you not, 16 whether or not there was a reason to expect 17 KPMG to review the funding documents of the 18 LDCs in performing its typical audit under 19 Belgium standards?</p> <p>20 A. Under Belgium standards?</p> <p>21 Q. Yes.</p> <p>22 A. I don't know what the Belgium 23 standards are.</p> <p>24 Q. So, in fact, KPMG may or may not, 25 as part of its auditing -- audit of L&H,</p> |
| <p>1 D. Larue 2 documentation would have been reviewed by 3 KPMG as typical auditing procedures would not 4 have called for such a review, correct?</p> <p>5 A. That's what I said, yes.</p> <p>6 Q. That's what you say, but, in fact, 7 you don't know what KPMG Belgium typically 8 does, correct?</p> <p>9 A. I do know that -- what I'm 10 referring to here are the applications of 11 U.S. auditing principles that KPMG was 12 required, my understanding, to apply in order 13 to render an opinion that the financial 14 statements prepared under U.S. GAAP were in 15 conformity with U.S. GAAP.</p> <p>16 Q. I'm asking really a different 17 question, so let's see if I can do it.</p> <p>18 It is not your opinion, is it, that 19 if Belgium auditing standards requires KPMG 20 to review funding documentation, but U.S. 21 GAAP does not, that KPMG was prohibited from 22 reviewing that documentation, are you?</p> <p>23 MR. BUTLER: Can I hear the 24 question again. 25 (Record read.)</p> | <p>1 D. Larue 2 sought to review the loan documentation of 3 the LDCs, correct?</p> <p>4 A. Are you asking me are they 5 prohibited under Belgium auditing principles 6 from reviewing those documents?</p> <p>7 Q. No.</p> <p>8 A. Are you asking me, are they 9 required to review those documents under 10 Belgium GAAS, is that what you're asking me?</p> <p>11 Q. No. What I'm asking you, you do 12 not know one way or another whether or not 13 KPMG ordinarily would review funding 14 documents of software customers of software 15 companies in Belgium, correct?</p> <p>16 A. Under Belgium GAAS, I don't know.</p> <p>17 Q. Do you consider yourself an expert 18 in auditing procedures?</p> <p>19 A. In auditing standards, yes.</p> <p>20 Q. What about in auditing procedures?</p> <p>21 A. I have a great deal of experience 22 in doing forensic analyses of lengthy 23 thousands of pages of documents to arrive at 24 an opinion on the application or 25 non-application of GAAP.</p> |
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| <p>1 D. Larue</p> <p>2 Q. And do you consider yourself an 3 expert in auditing procedures?</p> <p>4 A. I think I just answered that 5 question. I thought I said yes.</p> <p>6 Q. I will take it as a yes.</p> <p>7 Based upon your expertise in 8 auditing procedures and auditing standards 9 and in forensic evaluations, can you think of 10 any reason that Dexia would not include the 11 personal guarantees or the credit default 12 swaps in Dexia's loan file other than to hide 13 that fact?</p> <p>14 MR. BUTLER: Objection to form.</p> <p>15 A. There may be other reasons.</p> <p>16 Q. What may they be?</p> <p>17 A. They may have to do with tax 18 issues, they may have to do with personal 19 preferences of the parties involved.</p> <p>20 Q. What do you mean, the parties 21 involved?</p> <p>22 A. I guess there can be other reasons.</p> <p>23 I don't think that's the only reason.</p> <p>24 Q. I'm just asking you for what other 25 reasons?</p> | <p>1 D. Larue</p> <p>2 MR. BUTLER: Objection to form.</p> <p>3 A. I don't know.</p> <p>4 Q. In your forensic examinations, you 5 don't believe that people who have side 6 agreements or don't include typical 7 documentation in accordance with their 8 policies are trying to commit fraud?</p> <p>9 A. It's a possibility.</p> <p>10 Q. It is a possibility, it's one 11 possible reason?</p> <p>12 A. It's a possible reason.</p> <p>13 Q. And, in fact, as a forensic 14 examiner, aren't side agreements red flags 15 for forensic examiners?</p> <p>16 MR. BUTLER: Objection to form.</p> <p>17 A. They certainly can be. It depends 18 on the facts and circumstances. What the 19 side agreement relates to, the accounting 20 issues involved.</p> <p>21 Q. A second reason you said was that 22 keeping the credit default swap outside the 23 loan documentation may be perceived to 24 provide a different result under GAAP, 25 correct?</p> |
| <p style="text-align: right;">Page 207</p> <p>1 D. Larue</p> <p>2 A. I think one other reason would -- 3 and, again, I'm not an expert in Belgium tax 4 law, but there may have been a tax reason to 5 do that. There may have been a perception on 6 one or more of the parties that by doing it 7 one way would qualify under one GAAP or SEC 8 rule, whereas doing it a different way may 9 qualify under a different GAAP procedure or 10 principle.</p> <p>11 Q. When you say different GAAP 12 procedure...</p> <p>13 A. Principle.</p> <p>14 Q. Or qualify it.</p> <p>15 Qualify what?</p> <p>16 A. There may have been a perception on 17 the part of either a bank or the borrower 18 that if something was done one way, you would 19 get one accounting result or one tax result 20 or one economic result, but if you did it 21 another way, you would get a different tax 22 result, accounting result or economic result 23 or finance result. I don't know.</p> <p>24 Q. So one thing -- clearly one reason 25 would be to try to hide it, correct?</p> | <p style="text-align: right;">Page 209</p> <p>1 D. Larue</p> <p>2 A. That's one possible reason.</p> <p>3 Q. If you look at paragraph 9, and 4 feel free to review it, I'm just trying to 5 understand whether or not paragraph 9 is a 6 statement of fact, an assumption or an 7 opinion?</p> <p>8 MR. BUTLER: Objection to form.</p> <p>9 A. I think it's a statement of fact.</p> <p>10 It's a statement of fact because that, in 11 fact, is what the audit committee report says 12 and the loans and related party issues are 13 not addressed anywhere that I recall in that 14 report as being a factor in the audit 15 committee's conclusion that revenue 16 recognition was improper.</p> <p>17 Q. Is it fair to say that your 18 forensic accounting and other claimed 19 expertise did not play a role in reaching 20 that statement of fact, correct?</p> <p>21 A. In paragraph 9?</p> <p>22 Q. Yes.</p> <p>23 A. That's correct.</p> <p>24 Q. I assume in your view, any 25 reasonably intelligent person who could read</p> |

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| <p>1 D. Larue 2 would reach the same statement of fact? 3 A. Anybody who could read could see 4 that the audit committee said revenue 5 recognition was improper for reasons given 6 that were unrelated to the bank loans or to 7 the related party issues.</p> <p>8 Q. Now, if you look at paragraph 10, 9 what Artesia related loan transactions are 10 you referring to?</p> <p>11 A. I'm referring to -- I'm certainly 12 referring to the Radial loans, the DLIC loans 13 and the LDH loans. I don't recall whether or 14 not, I believe I did, let me look. Yes, 15 paragraph 196 refers to the BTG loan.</p> <p>16 Q. Okay. BTG loan and how much was 17 that loan?</p> <p>18 A. I don't recall. The dollar amounts 19 are disclosed in paragraph 196, but I see 20 it's broken down.</p> <p>21 Q. So paragraph 10 is to a small 22 percentage of the overall alleged revenue, 23 that includes Radial, LDH, LDF and LIC, 24 correct?</p> <p>25 A. Radial, LIC and LDH.</p> | <p>1 D. Larue 2 A. This says, for example, if the 3 plaintiffs are successful in proving that 4 Artesia is liable for the Radial and LIC 5 transactions, those loans were 3.2 percent of 6 L&H's alleged overstatement of revenues. 7 Q. Now, so that does not -- the 3.2 8 percent is not the percentage that would be 9 the percentage if it was BTG, Radial?</p> <p>10 A. Radial is included. 11 Q. LIC and LDF, correct? 12 A. That's correct. If you combined 13 those amounts, you would end up with a larger 14 percentage. 15 Q. What percentage would you end up 16 with? 17 A. I don't know. 18 Q. You only took the loan amounts, 19 correct? 20 A. That's correct. 21 Q. Based upon your asserted expertise 22 as an -- in GAAP and GAAS, would L&H have 23 been permitted to recognize any revenues from 24 LDF absent the loan by Dexia?</p> <p>25 MR. BUTLER: Objection to form.</p> |
| <p style="text-align: center;">Page 211</p> <p>1 D. Larue 2 Q. And BTG or not BTG? 3 A. I believe that statement refers 4 more to those three. 5 Q. Those three? 6 A. I believe so. 7 Q. Then why when you get to -- this is 8 the summary of conclusions, correct? 9 A. Yes, sir. 10 Q. When you -- where is this 11 conclusion discussed more fully in the 12 section? 13 A. It's actually discussed through the 14 entirety of section 5 because I believe in 15 that section, for the most part, I included 16 dollar amounts in each one of these. 17 Q. And do you set forth the 18 percentage, you say in paragraph 10 that it's 19 a small percentage. 20 Do you set forth that percentage 21 anywhere? 22 A. Paragraph 202. 23 Q. So the smallest percentage that's 24 in paragraph 10 is the 3.2 percent that's set 25 forth in 202, is that correct?</p> | <p style="text-align: center;">Page 213</p> <p>1 D. Larue 2 A. Permitted by whom? 3 Q. GAAP. 4 MR. BUTLER: Are you asking if they 5 came up with the money in some other 6 way, would it be okay? 7 MR. HARRIS: No, I'm asking what I 8 asked him. 9 MR. BUTLER: Let me hear the 10 question again. 11 (Record read.) 12 MR. BUTLER: I object to the form 13 of the question. 14 A. I don't really understand the 15 context of your question. 16 Q. All right. Let's see if I can 17 help, and perhaps we can turn to Larue 18 Exhibit 5 -- 19 A. I could. 20 If you're asking me is it 21 permissible for a customer to basically issue 22 an account receivable or account payable, 23 receivable in L&H in payment of a license, 24 yes, it is permissible. 25 Q. That's not what I was asking.</p> |

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| <p style="text-align: right;">Page 214</p> <p>1 D. Larue 2 MR. BUTLER: There is clearly some 3 confusion over your question. 4 Q. Let's turn to Larue Exhibit 5, 5 which is your rebuttal report, and I'm 6 particularly going to direct your attention 7 to page 9 and Exhibit 7-A. 8 A. Which is my appendix D. 9 Q. You talk about that you do not 10 believe the amount of revenue overstatement, 11 and I'm looking at paragraph 40, in excess of 12 the loan amounts is attributable to the bank. 13 Do you see that? 14 A. Actually, I don't see it. 15 Q. In paragraph 40, the next to last 16 sentence. 17 A. I see. 18 Q. It says, Therefore, I do not 19 believe that the amount of revenue 20 overstatement in excess of the 30.4 million, 21 15.6 million and 20 million in loans in 1997, 22 1998 and 1999 respectively is attributable to 23 the bank. 24 Do you see that? 25 A. I do.</p> | <p style="text-align: right;">Page 216</p> <p>1 D. Larue 2 the accuracy of the financial statements is 3 management's responsibility, not the bank's 4 responsibility, management's responsibility, 5 how they report the cash that they received, 6 the accounts receivable from the sales of 7 these licenses, that's the responsibility of 8 management. 9 Q. Okay. When you say I do not 10 believe the amount of -- in excess of 20 11 million is attributable to the bank and what 12 I'm trying to understand is what kind of an 13 opinion is that, is it a legal opinion or 14 what? 15 A. Well, they weren't attributable to 16 the bank. 17 Q. What does that mean, attributable? 18 How do you mean attributable? 19 A. Well, the bank loans were reported 20 as revenue and an additional amount, a 21 decision was made by L&H to report an 22 additional amount of revenues in the form of 23 the accounts receivable. 24 Q. What do you mean by attributable? 25 A. The bank didn't finance the</p> |
| <p style="text-align: right;">Page 215</p> <p>1 D. Larue 2 Q. Now, do you disagree with Mr. 3 Love's conclusion that L&H overstated 4 revenues by more than those amounts in 1997, 5 1998 and 1999? 6 A. That's my understanding. 7 Q. What is your understanding? 8 A. That revenues were overstated or at 9 least allegedly overstated by amounts greater 10 than the amounts you just articulated. 11 Q. And, for example, the loan -- let's 12 assume that a loan was \$10 million, but they 13 booked \$20 million as revenue, 10 in accounts 14 receivable, 10 in cash that were the proceeds 15 of the loan, the numbers may be different, 16 but that is your understanding of what L&H 17 did with regard to the LDCs that Dexia 18 funded, is that correct? 19 A. Yes, it is. 20 Q. I'm going to ask you, the first is, 21 your opinion that you don't -- you only think 22 the loan amount is attributable to the bank, 23 is that a legal conclusion? 24 A. Let me back up a second. 25 First of all, once again, you know,</p> | <p style="text-align: right;">Page 217</p> <p>1 D. Larue 2 accounts receivable. 3 My understanding is there was no 4 expectation that the bank would loan 5 additional funds in order for the LDCs to 6 payoff the accounts receivable. 7 As far as I knew, the bank knew 8 nothing about it. They were out of that part 9 of the picture. 10 Q. As you understand it, that is an 11 assumption that you were asked to make as to 12 the amount of the loan. 13 Now, what I'm trying to understand 14 is the context of your use of the term and 15 belief about what is and is not attributable 16 to Dexia? 17 A. The portion of the revenues 18 financed by the accounts receivable, it's my 19 understanding had nothing to do with the 20 bank. 21 Q. When you say had nothing to do with 22 the bank... 23 A. The bank wasn't involved in any way 24 or didn't expect to be involved in any way my 25 understanding in the payment of those</p> |

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| <p style="text-align: right;">Page 218</p> <p>1 D. Larue 2 accounts receivable. 3 Q. But you're not suggesting that as a 4 legal matter, that Dexia cannot be held 5 liable for more than the amounts of the loan, 6 are you? 7 A. I'm not saying anything as a legal 8 matter. I'm not an attorney, let alone an 9 attorney knowledgeable in Belgium law. 10 Q. As a factual matter, you only know 11 what you've been asked to assume, correct? 12 A. What I've been asked to assume has 13 been disclosed in my opening report and my 14 rebuttal report. 15 Q. So really what paragraph 40 says is 16 that I was asked to assume that Dexia had 17 nothing to do with anything other than the 18 amount of the loans, is that what 40 says? 19 A. I've been asked to assume that 20 Dexia made these loans in these amounts and 21 that there was no contemplation or no plan or 22 agreement that would have resulted in Dexia 23 making additional loans to these LDCs. 24 Q. And so that is all an assumption of 25 fact that you were asked to make, correct?</p> | <p style="text-align: right;">Page 220</p> <p>1 D. Larue 2 through Exhibit D that as a matter of legal 3 liability, Dexia should not be held 4 responsible for the other Dexia related LDC 5 revenues? 6 A. I'm not an attorney, I'm not 7 opining on any legal issue. 8 Q. And you're not doing so as a matter 9 of economics, are you? 10 MR. BUTLER: Objection to form. 11 A. I'm not sure what you mean by that. 12 Q. You're not saying they were not 13 economically responsible for that, are you? 14 You're not opining on anything in this chart? 15 MR. BUTLER: Objection to form. 16 This chart speaks for itself. 17 He can answer the question. 18 A. It says, Therefore I do not believe 19 that the amount of revenue overstatement in 20 excess of 30 million, 15.6 and 20 is 21 specifically attributable to the bank. 22 Q. And you're not saying that on the 23 basis of any analysis or conclusion other 24 than you were told to assume that, correct? 25 A. Assume what?</p> |
| <p style="text-align: right;">Page 219</p> <p>1 D. Larue 2 A. Yes. 3 Q. And so if you turn to Exhibit D of 4 your rebuttal report, am I correct that what 5 this does is it takes Mr. Love's Exhibit 7-A 6 report and substitutes in the amount of the 7 loans that you were told to assume Dexia made 8 to certain people? 9 A. I believe that's true. 10 Once again, I would like to see Mr. 11 Love's report, but I'm pretty sure that's 12 true. 13 Q. You excluded the other amounts from 14 Dexia -- of revenue ruled LDCs that Mr. Love 15 includes because you were told to assume that 16 Dexia had nothing to do with it, correct? 17 A. I was -- I assumed that Dexia would 18 not be involved or there were no plans for 19 Dexia to be involved in the payment of those 20 accounts receivable. 21 Q. And you assumed that as a matter of 22 fact? 23 A. It's a factual assumption that I 24 assumed in preparing my report, yes, sir. 25 Q. You were not attempting to suggest</p> | <p style="text-align: right;">Page 221</p> <p>1 D. Larue 2 Q. That -- 3 A. My factual -- my understanding of 4 the facts is that Dexia would not be involved 5 in the payment of these accounts receivable. 6 I was not asked to assume that that amount of 7 revenue overstatement was -- therefore, I do 8 not believe that the amount of revenue 9 overstatement is attributable to the bank. I 10 wasn't asked to assume that. That's my 11 opinion. 12 Q. Is that opinion based on accounting 13 expertise? 14 A. It's based on the factual 15 assumption that Dexia wouldn't be a part of 16 paying off these accounts receivable at any 17 point in time in the future. 18 Q. When you say it should not -- 19 A. It's based on that and it's based 20 on an accounting issue and that is, again, it 21 was management's decision to include not only 22 the revenues that they generated from the LDH 23 LDCs as revenue when they did, but to also 24 include the accounts receivable from the LDH 25 LDCs as revenue. That was management's</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 D. Larue 2 decision. 3 Q. Based on your assertive expertise 4 in auditing standards, do you believe that 5 KPMG would have allowed L&H to recognize the 6 accounts receivable as a revenue if L&H had 7 not gotten the cash portion when it did? 8 MR. BUTLER: Objection to form. 9 A. Are we assuming the same total 10 amount of revenue? 11 Q. Uh-huh. 12 A. So basically we're talking about 13 instead of having a smaller account 14 receivable, we have a larger account 15 receivable. 16 Q. And no cash? 17 A. And no cash. 18 Q. Correct. 19 A. SOP 97-2 requires an assessment as 20 to whether or not the amounts to be received 21 under this licensing agreement meet certain 22 criteria. 23 Are those amounts fixed and 24 determinable and is collection probable, KPMG 25 would normally -- an auditor would normally</p> | <p style="text-align: right;">Page 224</p> <p>1 D. Larue 2 to make a determination that the collection 3 was probable. 4 Q. And it is possible, is it not, that 5 but for the amounts that Dexia loaned in the 6 Dexia related LDCs that ultimately ended up 7 in cash in L&H, that KPMG would not have 8 permitted L&H to recognize any revenues from 9 the Dexia related LDCs? 10 MR. BUTLER: Objection to form. 11 A. Anything is possible. 12 Q. You don't have an opinion really 13 one way or the other? 14 A. I don't have the facts and 15 circumstances available to me to know what 16 information KPMG might or did have available 17 to them in testing the accounts receivable. 18 Q. If we turn back to paragraph 40 of 19 your rebuttal report, I'm just trying to 20 understand what the 30.4 million for 1997 21 represents, what loans are those that you've 22 assumed? 23 A. The '97 loan, would that be BTG, I 24 believe. I think that's the BTG loan. Yes, 25 that appears to be the BTG loan and it</p> |
| <p style="text-align: right;">Page 223</p> <p>1 D. Larue 2 go out and perform whatever tests the auditor 3 deemed necessary to make an assessment as to 4 whether or not the collection of the accounts 5 receivable was probable and if and to the 6 extent not required either a non-recognition 7 of that revenue until collection became 8 probable or to require the establishment of a 9 reserve for bad debts. 10 Q. I understand how KPMG would have 11 gone about it. My question was different. 12 Do you have an opinion as to 13 whether or not KPMG would have allowed L&H to 14 recognize any of the revenue from the Dexia 15 related LDCs if L&H had not gotten the Dexia 16 cash when it did? 17 MR. BUTLER: Objection to form. 18 A. I don't know. These are management 19 representations, KPMG what kind of 20 information would they have done to try to 21 determine collectability. 22 Q. That's not what I asked. 23 Do you want the question read back? 24 A. No. I don't know what kind of 25 information would have been available to them</p> | <p style="text-align: right;">Page 225</p> <p>1 D. Larue 2 appears to not include any amount from the 3 Dictation Consortium loan. 4 MR. HARRIS: Shall we take a break. 5 THE VIDEOGRAPHER: We are going off 6 the record at 3:26 p.m. on tape No. 1. 7 (Recess.) 8 THE VIDEOGRAPHER: We're going back 9 on the record. The time is 3:39. This 10 is tape No. 4. 11 Q. If we could return, Mr. Larue, if 12 we could return to your report. I would like 13 to direct your attention to the section in 14 which you discuss special purpose entities 15 and I believe that is section 3. 16 I believe that you earlier said 17 that the LDCs have many of the 18 characteristics of a special purpose entity, 19 is that correct? 20 A. I predicated that statement by 21 pointing out, as I've done in my report, 22 there is no offerings definition of an SPE in 23 the accounting literature, so in answering 24 your question in general terms, the way these 25 have been described here, that the LDCs</p> |

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| <p style="text-align: right;">Page 226</p> <p>1 D. Larue 2 appear to have had several of the 3 characteristics, yes. 4 Q. Are there any characteristics of a 5 special purpose entity which must be present 6 for an entity to qualify as a special purpose 7 entity? 8 A. Again, there is no definition of a 9 special purpose entity under GAAP. 10 Q. As you used the term. 11 A. You're actually using the term in 12 your question to qualify for a special 13 purpose entity and my question back to you is 14 for what purpose? 15 Q. For the purpose of your report. 16 A. I've described in my report some of 17 the characteristics that appear from the 18 literature to be present with respect to what 19 many people refer to as a special purpose 20 entity. 21 Q. And one characteristic is a 22 sponsor, correct? 23 A. That's a characteristic, yes. 24 Q. Do you have information that the 25 LDCs had any sponsors, as that term is used</p> | <p style="text-align: right;">Page 228</p> <p>1 D. Larue 2 sometimes a corporation is created before it 3 actually has shareholders. 4 Q. And so an SPE is created by 5 somebody, correct, that you term a sponsor? 6 A. Yes, I've used that term in this 7 report, yes. 8 Q. And all corporations are created by 9 somebody, correct? 10 A. By some breathing human being, 11 yes -- well, actually, that's not true. 12 Corporations can create other corporations, 13 so, yes, corporations are created by 14 somebody. 15 Q. And you say SPEs have no purpose 16 other than the transactions for which they 17 were created. 18 What does that mean? 19 A. It means that generally, unlike a 20 regular ongoing business with multiple 21 operations and day in and day out operations, 22 it's my understanding when people refer to an 23 SPE, they typically are referring to an 24 entity that is designed, preordained, 25 actually, to do one thing. It may be</p> |
| <p style="text-align: right;">Page 227</p> <p>1 D. Larue 2 on page 12 of your report? 3 A. Again, this deals not with the 4 facts of this case, but just a general 5 description of SPE. 6 Q. I understand. 7 A. Do I have any information of who 8 might be a sponsor? 9 Q. Not who. Whether or not the LDCs 10 had a sponsor, as the term sponsor is used on 11 page 12 in your report? 12 A. It's my understanding that these 13 entities were created by -- not by L&H, not 14 by the shareholders of L&H or officers of 15 L&H, but, rather, were created by independent 16 investors, third party investors. 17 Q. And the third party investors then 18 would be the sponsors of the SPE? 19 A. I put that in parenthesis here. I 20 described the party creating the SPE as a 21 sponsor. 22 Q. And all corporations are created, 23 correct, by their investors? 24 A. All corporations are created, 25 oftentimes it's my understanding that</p> | <p style="text-align: right;">Page 229</p> <p>1 D. Larue 2 leasing, I might be the lessor of the 3 equipment to the lessee. And I'm not running 4 a business, I am not doing anything else, I'm 5 just leasing these assets to a particular 6 lessee, so the scope is much more narrow than 7 you would find if somebody started up an 8 active trader business. 9 Q. When you say no purpose other than 10 the transactions as for which they were 11 created, those are set forth in the SPE's 12 governing documents? 13 A. I don't know that's the case. It 14 may be there is a contract or -- I don't 15 know, I guess, you know, the purpose could be 16 established and the documents creating the 17 entity or by contract with another party. 18 Q. Is Microstrategy the corporation of 19 which you are a director, a special purpose 20 entity, as you use that phrase in your 21 report? 22 A. No, sir. 23 Q. Does it do anything other than sell 24 software? 25 A. Yes, sir.</p> |

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| <p style="text-align: right;">Page 230</p> <p>1 D. Larue 2 Q. It does. 3 What else does it do? 4 A. It develops software, updates the 5 software, conducts training sessions, 6 provides consulting services. 7 Microstrategy has a lot of 8 employees around the world. 9 Q. Do you have any facts that suggest 10 that the LDCs did not have the power or the 11 authority to do everything that Microstrategy 12 does? 13 MR. BUTLER: I object to the form 14 of the question. 15 A. No. 16 Q. Now, when you say that the LDCs did 17 have certain characteristics that -- of a 18 special purpose entity, as you used that term 19 in your report, please identify every 20 characteristic of the LDCs that it had that 21 Microstrategy does not have? 22 MR. BUTLER: I object to the form 23 of the question. 24 A. It's my understanding the LDCs did 25 not have any employees. At the time that</p> | <p style="text-align: right;">Page 232</p> <p>1 D. Larue 2 Q. It does? 3 A. Yes. 4 Q. Which ones? Identify them for me, 5 please. 6 A. When you take a limited liability 7 company that's actively engaged in a trader 8 business and it decides to incorporate those 9 operations, the corporation is something 10 that -- the corporation is a new legal 11 entity, but it relates to the same business, 12 the business operations are ongoing. 13 Q. Mr. Larue, is it -- is the 14 characteristic of a special purpose entity 15 that it has no employees throughout its 16 existence? 17 A. I don't think I said that here. 18 Q. I'm asking you. 19 A. What I do think is that you might 20 start off as what most people would consider 21 to be or some people would consider to be a 22 special purpose entity and evolve into 23 something else. 24 Q. Is it your understanding that the 25 LDCs from the time they were created intended</p> |
| <p style="text-align: right;">Page 231</p> <p>1 D. Larue 2 these revenues were recognized, what happened 3 to them later, I have no idea. 4 Q. Holding companies often have no 5 employees, correct? 6 A. That's correct. 7 Q. Are they special purpose entities? 8 A. No. They wouldn't generally be 9 considered to be special purpose entities. 10 Q. What other characteristics did the 11 LDCs have of a special purpose entity, as you 12 use that term in your report? 13 A. My understanding is that they had 14 limited or no active trader business 15 operations. 16 Q. At what point in time? 17 A. At the time referenced in my report 18 during that period of time. 19 Q. When they were created? 20 A. When they were created. 21 Q. Does any corporation have active 22 trade or business at the time its created? 23 A. At the instant of its creation? 24 Q. Yes. 25 A. Yes.</p> | <p style="text-align: right;">Page 233</p> <p>1 D. Larue 2 to have employees? 3 A. Again, you're asking me the 4 intention of the people who basically formed 5 and then managed those entities. I can't 6 speak to their intention. 7 The other thing I would comment is, 8 once again, you're getting into, we have 13 9 LDCs here, it's my understanding that over a 10 period of time, the facts and circumstances 11 may have changed, the plans may have changed, 12 I don't know. 13 Q. Did the license agreements with L&H 14 of the Dexia related LDCs, were they 15 identical in substance? 16 A. You mean the terms of the licensing 17 agreement, not the dollar amounts, of course? 18 Q. Yes. 19 A. I don't know. 20 Q. You don't know. 21 Let me hand you a document that we 22 will mark as Larue Exhibit 6? 23 (Document dated September 29, 1998 24 marked Larue Exhibit 6 for 25 identification.)</p> |

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| <p style="text-align: right;">Page 234</p> <p>1 D. Larue 2 Q. And I will represent to you that 3 this is the agreement between the Slavic 4 Development Company and Lernout and Hauspie 5 Speech Products, NV dated September 29, 1998. 6 MR. BUTLER: I can't agree with 7 that representation because there has 8 been no evidence about this document in 9 this case. 10 Q. Have you ever seen this document 11 before? 12 A. My records show I haven't seen this 13 document with either one of these Bates 14 numbers and I don't recall seeing this 15 document. 16 Q. I believe your earlier testimony 17 was that you did not review, prior to 18 submission of either of your reports, any of 19 the agreements between the Dexia related LDCs 20 and L&H, correct? 21 A. Say that again. 22 (Record read.) 23 A. I didn't have access to any 24 documents between L&H and Dexia, I didn't 25 review them.</p> | <p style="text-align: right;">Page 236</p> <p>1 D. Larue 2 Q. Did you ask? 3 A. I did not. 4 Q. I take it that's because you 5 believed that the contents of those 6 agreements were not important for your 7 opinions, correct? 8 A. No. 9 Q. No? 10 A. No. 11 Q. If you thought they were important, 12 why didn't you ask for them? 13 A. I was asked to assume certain 14 factual aspects of these documents, which I 15 did assume, I thought that was important for 16 me to actually read through these documents, 17 not being an attorney, among other things, I 18 didn't consider to be important as long as 19 that fact was fully disclosed in my report. 20 Q. I would like to direct your 21 attention to page 3 of the agreement. 22 A. I'm there. 23 Q. It says there that development by 24 the company of the products and in paragraph 25 2.3-B, Roman I, it says, The company shall be</p> |
| <p style="text-align: right;">Page 235</p> <p>1 D. Larue 2 Q. When you say you didn't have 3 access, what do you mean? 4 A. You are asking me before I was 5 engaged? 6 Q. Before you submitted either of your 7 reports. 8 A. Did I review this agreement? 9 Q. Let me make sure the question is 10 clear. 11 Prior to the submission of each of 12 your reports, it is true, is it not, that you 13 did not review any agreement between a Dexia 14 related LDC and L&H? 15 A. I don't recall that I reviewed any 16 such document. 17 Q. And they were available to you, 18 correct? 19 MR. BUTLER: Objection to form. 20 A. Yes, I assume they were. 21 Q. But you didn't ask for them, 22 correct? 23 A. I shouldn't assume that they were. 24 I don't know what documents would have been 25 available to me had I asked.</p> | <p style="text-align: right;">Page 237</p> <p>1 D. Larue 2 responsible for the hiring of qualified 3 personnel. 4 A. I see that. 5 Q. Do you have any reason to believe 6 that Slavic Development Company was not 7 responsible for hiring qualified personnel to 8 perform its obligations under the agreement 9 it had with L&H? 10 MR. BUTLER: Objection to form. 11 A. First of all, I don't know what 12 obligations you're referring to. 13 Q. Did it have any obligations? 14 A. Who? 15 Q. The LDC. 16 MR. BUTLER: Objection to form. 17 A. I don't know. 18 Q. You don't know one way or the 19 other? 20 A. This is a lengthy document. Who 21 are you talking about in terms of the 22 company? Who is the company? The agreement 23 between Slavic Development Company -- I think 24 I understand. 25 Would you ask your question again.</p> |

| Page 238 | Page 240 |
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| 1 D. Larue | 1 D. Larue |
| 2 Q. Sure. | 2 other. |
| 3 Do you have any reason to believe | 3 Q. And so you don't know whether or |
| 4 that Slavic Development Company was not | 4 not the accounting treatment for special |
| 5 responsible for the hiring of qualified | 5 purpose entities have any relevance to the |
| 6 personnel to fulfill Slavic Development | 6 Dexia related LDCs, correct? |
| 7 Company's obligations to L&H? | 7 A. That's not correct. That's what my |
| 8 A. I can't. This is a lengthy | 8 report largely is all about, is talking about |
| 9 document. I would have to study that to make | 9 what the accounting standards are as they |
| 10 an opinion about that. I don't know what | 10 apply to certain entities with certain |
| 11 responsibilities the Slavic Company did or | 11 characteristics and how those compared with |
| 12 did not have to Dexia -- I mean to L&H. | 12 the characteristics that I factually assumed |
| 13 Q. Now, we were talking about -- let's | 13 in preparing my report. |
| 14 talk about the Slavic Development Company. | 14 Q. Well, I understand that, but what |
| 15 What characteristics did it have | 15 I'm really asking is something different. |
| 16 that were consistent with a special purpose | 16 You are not prepared to opine that |
| 17 entity, as you used that term in your report? | 17 the accounting for special purpose entities |
| 18 A. I don't know that much about that | 18 had any relationship to the Dexia related |
| 19 specific company. | 19 LDCs as they, in fact, existed, correct? |
| 20 Q. Do you have -- do you know whether | 20 A. No. I describe in section 3 |
| 21 or not Slavic Development Company had any | 21 accounting principles that are generally |
| 22 characteristic of a special purpose entity, | 22 applicable, not just necessarily to SPEs. I |
| 23 as you used that term in your report? | 23 applied those principles to the factual |
| 24 A. Do I know for a factual certainty, | 24 assumptions I made in section 4. |
| 25 no. | 25 Q. Let me keep -- |
| | |
| | Page 239 |
| 1 D. Larue | 1 D. Larue |
| 2 Q. Do you know if any LDC had any | 2 A. If I could, let me make it very |
| 3 characteristic of a special purpose entity, | 3 clear that GAAP, prior to a recent 2003 |
| 4 as you used that term in your report? | 4 announcement which still doesn't refer to |
| 5 A. Do I know for a factual certainty? | 5 SPEs, didn't have a rule that said if you're |
| 6 No, I don't. | 6 an SPE and here is how we define an SPE, then |
| 7 Q. When you say, factual certainty, | 7 here are all of the accounting principles |
| 8 what do you mean? | 8 that are going to apply to you. |
| 9 A. You're asking me to basically look | 9 In other words, once you make a |
| 10 at the facts surrounding these LDCs and try | 10 determination you are or not -- that you are |
| 11 to determine whether or not those facts match | 11 an SPE, then there is this whole basketful of |
| 12 up with the way I've described an SPE in | 12 accounting principles that now apply to you |
| 13 section 3 of my report. | 13 that would not have applied before. |
| 14 Q. So you are not prepared to offer | 14 Accounting principles don't define an SPE and |
| 15 any opinion at trial that any of the LDCs | 15 pull out the accounting principles that will |
| 16 were, in fact, SPEs, correct? | 16 always be applied once the determination is |
| 17 A. I made certain assumptions about | 17 made that you are an SPE. |
| 18 some of the characteristics of the LDCs | 18 The accounting principles I |
| 19 generally and I've disclosed those | 19 described in section 3 of my report are |
| 20 assumptions in my report. | 20 accounting principles that deal with |
| 21 Q. Do you conclude in your report that | 21 consolidation issues related party |
| 22 any of the LDCs were special purpose | 22 transactions and so forth, to the extent |
| 23 entities, as you used that term in your | 23 those are applicable to the facts that I've |
| 24 report? | 24 assumed in this case, I have applied them. |
| 25 A. I don't conclude one way or the | 25 Q. Now, let me try my question again |

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| <p style="text-align: right;">Page 242</p> <p>1 D. Larue 2 because, clearly, we're not doing so well in 3 terms of me making my question clear or you 4 hearing it. 5 Do you have my prior question in 6 mind? 7 A. You better ask me again. 8 Q. You don't, is that right? 9 A. Would you ask me again, please. 10 Q. Do you have in mind the question 11 that you just purported to answer? 12 MR. BUTLER: I don't understand 13 this. 14 Can you just reread the question so 15 we all have it if mind. 16 MR. HARRIS: No, she can't. 17 Can you answer my question. 18 MR. BUTLER: You are asking if he 19 has it in mind again. He just answered 20 the question. 21 Q. Can you answer the question. 22 A. I thought I did answer the 23 question. 24 Q. Do you have the question in mind 25 that you just answered?</p> | <p style="text-align: right;">Page 244</p> <p>1 D. Larue 2 Are there any accounting principles 3 set forth in section 3 that are not 4 applicable to non-special purpose entities 5 and by non-special purpose entities, I mean 6 an entity that is not a special purpose 7 entity, as you describe that term? 8 A. I believe most of the discussion in 9 section 3 deals with accounting principles 10 that are applicable to all 10 practices. 11 Q. Is there any accounting principal 12 set forth or discussed in section 3 of your 13 report that is not applicable to 14 Microstrategy? 15 A. By applicable, do you mean 16 literally applicable to Microstrategy or do 17 you mean to entities like Microstrategy. 18 Q. I mean applicable to Microstrategy. 19 A. Yes. 20 Q. Okay. Which ones? 21 A. As disclosed in its public 22 statements, Microstrategy doesn't have any 23 related party issues, so those rules are 24 inapplicable that they have not had to be 25 applied to the facts and circumstances</p> |
| <p style="text-align: right;">Page 243</p> <p>1 D. Larue 2 MR. BUTLER: I object to the 3 question. 4 You can answer to the best of your 5 ability. 6 A. You asked me about accounting 7 principles for SPEs and whether or not 8 accounting principles for SPEs were 9 applicable to the LDCs. 10 Q. As they existed in fact. 11 A. As they existed in fact and based 12 on the factual assumptions that I made in my 13 report. 14 Q. That was not my question. 15 MR. BUTLER: Maybe you should reask 16 your question. 17 Q. Maybe you should listen to my 18 question better. 19 MR. BUTLER: Just a moment. Don't 20 lecture the witness. He is trying to 21 answer your questions, please. 22 MR. HARRIS: We can obviously 23 disagree about lots of things. 24 Q. Let me make sure it is clear. Let 25 me ask another question first.</p> | <p style="text-align: right;">Page 245</p> <p>1 D. Larue 2 related to Microstrategy in its operations 3 since I've been a member of the board of 4 directors. 5 Q. Let me then, perhaps you didn't 6 understand what I meant by applicable, given 7 your answer. 8 Are there any accounting principles 9 or rules set forth in section 3 with which 10 Microstrategy does not need to comply? 11 A. But for possible changes since the 12 years at issue here, these rules are 13 applicable to public companies like 14 Microstrategy, if their circumstances require 15 the application of those principles. 16 Q. So all of the accounting principles 17 set forth in section 3 are applicable to 18 entities which are not special purpose 19 entities, correct? 20 A. What I've described in this section 21 is generally accepted accounting principles 22 for purposes that are required to comply with 23 generally accepted accounting principles, 24 these rules would apply. 25 Q. And so the title could also be for</p> |

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| <p style="text-align: right;">Page 246</p> <p>1 D. Larue 2 accounting -- entity which need to comply 3 with generally accepted accounting 4 principles, correct? 5 MR. BUTLER: Is this about debating 6 the title of section 3, sorry, can you 7 answer the question. 8 A. The title could be whatever I 9 wanted it to be, the title -- 10 Q. You wanted it to be special purpose 11 entities to suggest that special purpose 12 entities had some relevance to this case, but 13 then you didn't identify anything in here 14 that was solely related to special purpose 15 entities, correct? 16 MR. BUTLER: Objection to form. 17 A. Many of the principles that would 18 normally be applied to a special purpose 19 entity would be applied in the context of the 20 LDCs, but I could have -- that title could 21 have been accounting for -- relevant 22 accounting principles for publicly traded 23 companies or companies complying with GAAP. 24 Q. Those same principles that would be 25 applicable to special purpose entities would</p> | <p style="text-align: right;">Page 248</p> <p>1 D. Larue 2 Q. As a factual matter, you do not 3 know one way or the other whether or not 4 Lernout and Hauspie's principles were able to 5 and did control or significantly influence 6 the management or operating policy of the 7 Dexia related LDCs to the extent that one of 8 the transacting parties might be prevented 9 from fully pursuing its own special 10 interests, correct? 11 A. That's correct. I don't know that, 12 but what I do know is or what I believe I 13 know, what I've been asked to factually 14 assume is that the principals of L&H did not 15 hold equity interests in the LDCs directly or 16 indirectly that those equity interests 17 represented a stake by unrelated parties. 18 Q. But it doesn't talk in terms of 19 holding equity interests, does it? It talks 20 in terms of controls or could significantly 21 influence the management or operating 22 policies, correct? 23 A. Yes, it does. That's relevant. I 24 mean, that fact is relevant to determining 25 the likelihood, I suppose, that unrelated</p> |
| <p style="text-align: right;">Page 247</p> <p>1 D. Larue 2 be applicable to non-special purpose 3 entities, correct? 4 MR. BUTLER: Objection. Asked and 5 answered. 6 You can answer again. 7 A. To the extent described in this, 8 yes. 9 Q. And so -- let's then turn to page 10 16 of your report where you quote a portion 11 of FAS 57, correct? 12 A. Yes, sir. 13 Q. And it indicates that a party is 14 related to another party if it controls or 15 can significantly influence the management or 16 operating policies of the other to an extent 17 that one of the transacting parties might be 18 prevented from fully pursuing its own 19 separate interests, correct? 20 A. That's what it says, yes. 21 Q. And that is a recognized general 22 accounting principle, correct? 23 A. This is a quote from FAS 57, yes, 24 it's a generally accepted accounting 25 principles.</p> | <p style="text-align: right;">Page 249</p> <p>1 D. Larue 2 independent investors that have their own 3 money at stake would permit the principals of 4 L&H to do things that were not in the best 5 interest of the investors. It goes to the 6 issue of significance. 7 Q. Let me make sure I understand. 8 You're not suggesting that the 9 definition of related parties that we've just 10 looked at is limited to parties who hold an 11 equity interest in another, are you? 12 A. No, sir. 13 Q. Because it would be very easy for 14 the financial accounting standards board to 15 have used those words, that holds an equity 16 interest, correct? 17 A. That's correct. 18 Q. But they chose not to, correct? 19 A. Under FAS 57, for the purposes of 20 disclosure set forth in 57, yes, for other 21 purposes we do look at equity interests, but 22 not here. 23 Q. But not here? 24 A. Yes, sir. 25 Q. Right. And the financial</p> |

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| <p>1 D. Larue 2 accounting standing boards, therefore, does 3 know how to use the term equity interest and 4 when they use something else, they mean 5 something else, correct?</p> <p>6 MR. BUTLER: Object to the form. I 7 don't understand this whole line.</p> <p>8 MR. HARRIS: That's why you're 9 still litigating the case.</p> <p>10 MR. BUTLER: This says principal 11 owners of the enterprise, this rule does 12 apply to equity interest, it's right 13 there on the page.</p> <p>14 Q. It applies to the principal owners 15 of L&H like Mr. Lernout and Hauspie, but they 16 don't have to have an equity interest in the 17 LDCs to significantly control their 18 management or policies, correct, Mr. Larue?</p> <p>19 MR. BUTLER: Object to the form.</p> <p>20 A. I believe that's correct and I 21 believe I stated that in my report elsewhere.</p> <p>22 Q. If you look at page 17, you refer 23 to SEC Regulation S-X, Section 210.4-08-K, 24 correct?</p> <p>25 A. Yes, sir.</p> | <p>1 D. Larue 2 A. Not the quoted statements here. 3 The quoted statements, Related party 4 transactions should be identified in the 5 amounts stated on the face of the balance 6 sheet income statement or statement of cash 7 flows.</p> <p>8 Q. And the SEC does not limit those 9 related party transactions which should be 10 identified to material party transactions, 11 correct?</p> <p>12 A. The materiality threshold under 13 this -- wait -- not in this quoted section, 14 the SEC generally states that transactions 15 have to be disclosed if they are material. 16 There is an overarching requirement.</p> <p>17 Q. Let me make sure I understand the 18 testimony. 19 Are you testifying that related 20 party transactions should be identified 21 really means material related party 22 transactions should be identified, is that 23 your testimony?</p> <p>24 A. Under GAAP, you normally don't -- 25 Q. I didn't ask about GAAP. I'm</p> |
| Page 251 | Page 253 |
| <p>1 D. Larue 2 Q. Is this the same SEC whose 3 complaint we saw against Lernout and Hauspie 4 earlier today?</p> <p>5 MR. BUTLER: Objection to the form.</p> <p>6 A. It is the SEC.</p> <p>7 Q. The same one?</p> <p>8 A. The United States SEC.</p> <p>9 Q. They set accounting standards, 10 don't they?</p> <p>11 MR. BUTLER: Objection to form.</p> <p>12 A. They do not set accounting 13 standards, the FASB and AICPA sets accounting 14 standards. The SEC also sets accounting 15 standards. They are not the sole body that 16 sets accounting standards.</p> <p>17 Q. One of the SEC's jobs is to set 18 accounting standards, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Now, section -- in paragraph 47, 21 you quote a portion of that Regulation S-X, 22 210.4-08-K, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. It talks about which related party 25 transactions should be identified, correct?</p> | <p>1 D. Larue 2 talking about SEC regulation -- 3 MR. BUTLER: Please don't interrupt 4 the witness. Do not talk over me. I am 5 asking you as a courtesy not to 6 interrupt the witness. Now please ask 7 the question.</p> <p>8 A. Under GAAP disclosure is not 9 normally required for immaterial items.</p> <p>10 Q. I was asking what the SEC imposes. 11 You say they impose additional requirements 12 for reporting related party transactions, is 13 that correct?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Is one of the additional 16 requirements that the SEC imposes set forth 17 in paragraph 47 of your report?</p> <p>18 A. Yes.</p> <p>19 Q. Is that additional requirement for 20 reporting related party transactions set 21 forth in paragraph 47 limited to material 22 party transactions?</p> <p>23 A. I would have to check to be sure.</p> <p>24 Q. You don't know one way or the 25 other?</p> |

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| <p>1 D. Larue</p> <p>2 A. I think it is limited to material</p> <p>3 transactions. I know in Regulation S-K,</p> <p>4 which I have referenced in the next</p> <p>5 paragraph, materiality is actually defined by</p> <p>6 the SEC with the \$60,000 amount that they</p> <p>7 referred to there.</p> <p>8 Q. And the SEC sometimes uses the term</p> <p>9 material, correct?</p> <p>10 A. Yes.</p> <p>11 Q. But they didn't use it in</p> <p>12 section -- in Regulation S-X, Section</p> <p>13 210.4-08-K, correct?</p> <p>14 A. There may be other components to</p> <p>15 that, I don't know that I cited the whole</p> <p>16 thing, but certainly from the quoted</p> <p>17 statements in my report, they don't use the</p> <p>18 word material in that statement.</p> <p>19 Now, as with FASB statements, there</p> <p>20 is an overarching rule that says these</p> <p>21 statements are not intended to be applied in</p> <p>22 all circumstances where the dollar amounts</p> <p>23 are immaterial. It's an overarching thing</p> <p>24 that may not be stated in every single FASB</p> <p>25 statement and it's stated once, it applies to</p> | <p>1 D. Larue</p> <p>2 accepted accounting principles except as</p> <p>3 modified or appended by the SEC.</p> <p>4 Q. Mr. Larue, I think I understand</p> <p>5 that it's your testimony that the SEC just</p> <p>6 omitted a word that you feel is applicable.</p> <p>7 I understand.</p> <p>8 A. I'm just trying to answer your</p> <p>9 question.</p> <p>10 Q. It really should read material</p> <p>11 related transaction. I understand.</p> <p>12 MR. BUTLER: So ask another</p> <p>13 question, please.</p> <p>14 Q. Let's move on to paragraph 48 in</p> <p>15 which you quote a portion of Regulation S-X,</p> <p>16 Section 229.404.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It says, Describe briefly any</p> <p>20 transaction or series of similar transaction</p> <p>21 in which the registrant was or is to be a</p> <p>22 party in which the amount involved exceeds</p> <p>23 \$60,000 and in which any of the following</p> <p>24 persons had or will have a direct or indirect</p> <p>25 material interest.</p> |
| <p style="text-align: center;">Page 255</p> <p>1 D. Larue</p> <p>2 all of the FASB statements unless specified</p> <p>3 otherwise, so it applies in the context of</p> <p>4 those FASB statements.</p> <p>5 I just don't recall from memory.</p> <p>6 This is a long regulation. I don't recall if</p> <p>7 there is any special rule that would say any</p> <p>8 and all related party transactions must be</p> <p>9 identified or own the material. Normally, it</p> <p>10 would be only the material. I can't tell you</p> <p>11 without going back and looking at this</p> <p>12 regulation and probably other regulations, as</p> <p>13 well.</p> <p>14 Q. Just so we're clear, the FASB</p> <p>15 overarching rule of materiality has no</p> <p>16 applicability to SEC regulations, correct?</p> <p>17 A. It certainly does have</p> <p>18 applicability to SEC regulations.</p> <p>19 Q. It does?</p> <p>20 A. SEC basically says that</p> <p>21 pronouncements that are considered to be</p> <p>22 authoritative GAAP are going to be part of</p> <p>23 their regulations.</p> <p>24 Basically, the SEC allows the</p> <p>25 private sector to promulgate generally</p> | <p style="text-align: center;">Page 257</p> <p>1 D. Larue</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Then you then quote the following</p> <p>5 definition of following persons, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. And the following persons include</p> <p>8 the directors of executive officers of the</p> <p>9 registrants, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So as you understand it, the SEC</p> <p>12 Regulation S-X, 229.404 applies to you as a</p> <p>13 director of Microstrategic, correct?</p> <p>14 A. Absolutely.</p> <p>15 Q. Now, it also talks about an</p> <p>16 indirect material interest.</p> <p>17 What is an indirect material</p> <p>18 interest?</p> <p>19 A. They don't define it.</p> <p>20 Q. I'm asking you as an expert.</p> <p>21 A. What do they mean by indirect</p> <p>22 material interest?</p> <p>23 Q. Aren't you an expert on applying</p> <p>24 SEC Regulation S-X, Section 229.404?</p> <p>25 MR. BUTLER: Objection to form.</p> |

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| <p style="text-align: right;">Page 258</p> <p>1 D. Larue 2 You can ask the question, but he has 3 never been held out on that provision. 4 Q. Mr. Larue, do you believe that you 5 are an expert in applying SEC Regulation S-K, 6 Section 229.404? 7 A. I understand this regulation, yes. 8 Q. What does indirect material 9 interest mean? 10 A. It's not a defined term. 11 Q. What does it mean? 12 A. It could be different things to 13 different people. 14 Q. What does the SEC intend it to 15 mean? 16 MR. BUTLER: Objection to form. 17 How can he testify as to what the SEC 18 intends in a regulation to mean, so I 19 object to the question. 20 MR. HARRIS: Most experts can't. 21 MR. BUTLER: I know your experts 22 can't. 23 MR. HARRIS: If they can't, then 24 they can't assist the jury. 25 MR. BUTLER: That's not true. You</p> | <p style="text-align: right;">Page 260</p> <p>1 D. Larue 2 A. I don't believe. I would have to 3 see a full copy of this regulation. I don't 4 believe that it sets forth specifically a 5 creditor interest. I don't believe it 6 identifies a creditor interest. 7 In my opinion, they probably mean 8 to include -- they probably mean to have a 9 creditor interest subsumed in the term 10 material interest, but I don't believe they 11 state that explicitly. 12 Q. Let me make sure I understand. 13 As you understand the term indirect 14 material interest, were the loans by Willard, 15 Lernout and Hauspie to LDF an indirect 16 material interest in LDF? 17 A. I believe I opined that I felt that 18 they were. 19 Q. So, in your opinion, L&H should 20 have disclosed those loans by Lernout, 21 Hauspie and Willard to LDF in L&H's 1999 22 financial statements, correct? 23 A. I believe that's what I said. I 24 would like to find that in my report to see 25 exactly what I said.</p> |
| <p style="text-align: right;">Page 259</p> <p>1 D. Larue 2 can't confuse the jury. 3 Q. Do you have any understanding of 4 the term indirect material interest? 5 A. Of course. 6 Q. What is your understanding? 7 A. My understanding would have to be 8 by way of example. 9 Q. Provide me some examples. 10 A. As I stated later in my report, the 11 fact that the officers loaned money to the 12 LDF -- to LDF meant that the officers of L&H 13 had an economic interest that was material, 14 that exceeded the \$60,000 limit and for that 15 reason, if they were considered to be -- for 16 that reason, it appears that there should 17 have been a disclosure. 18 Q. So, in fact, it is now clear that 19 on the facts, as you have assumed them, that 20 SEC Regulation S-X, Section 229.404 required 21 the loans by Lernout, Hauspie and Willard to 22 the LDF -- to LDF to be disclosed, correct? 23 MR. BUTLER: Objection. I think 24 you got the name wrong, but you can 25 answer.</p> | <p style="text-align: right;">Page 261</p> <p>1 D. Larue 2 Q. We looked at it earlier. 3 A. I thought we had. 4 Q. You suggested it was only if they 5 were related parties and now it appears as 6 though you are conceding that based on the 7 facts, that you've assumed that Lernout, 8 Hauspie and Willard were related parties to 9 LDF as defined by the SEC? 10 MR. BUTLER: Objection to form and 11 there is no question there. 12 A. That's not what I said. 13 In paragraph 119, it states here, 14 Disclosure by L&H of this loan to the LDF 15 LDCs would appear to have been required by 16 SEC Regulation S-K, Section 229.404 and I 17 don't qualify that by any reference to 18 related parties. 19 In the preceding paragraph, I 20 pointed out that there is a related party 21 issue under FASB 57. 22 Q. So your correction is that your 23 report, in fact, makes clear that L&H should 24 have disclosed this loan, correct? 25 A. I'm not correcting anything. I'm</p> |

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| <p style="text-align: right;">Page 262</p> <p>1 D. Larue 2 correcting you. 3 Q. That's what I meant. 4 A. Okay. I thought you said I was 5 correcting myself. 6 Q. Your correction was that in your 7 report, you believe you made clear that L&H, 8 in your opinion, should have disclosed in its 9 1999 financial statements the loan by 10 Lernout, Hauspie and Willard to LDF, correct? 11 A. Under this regulation, I believe I 12 did make that clear. 13 Q. Now, let's turn the guarantees and 14 let's take a look at -- can a guarantee ever 15 be an indirect material interest? 16 A. Again, that term is not defined in 17 these old regulations, so could it be, 18 possibly, yes. 19 Q. In your opinion? 20 A. In my opinion, it could be. 21 Q. And what would make a guarantee, in 22 your opinion, an indirect material interest? 23 A. Whether the SEC considers that to 24 be an indirect material interest, again, in 25 paragraph 111, the regulation, that</p> | <p style="text-align: right;">Page 264</p> <p>1 D. Larue 2 guarantees. 3 Q. I'm asking for yours, you're the 4 expert whose I'm asking for. I understand 5 other experts may have a different view. I 6 understand that, but I'm asking for yours. 7 MR. BUTLER: You don't have to give 8 him commentary on every answer. Just 9 ask a question. 10 A. If it would have been me. I would 11 have been more comfortable disclosing the 12 guarantees. 13 Q. But what, in your view, and I 14 understand that and I appreciate that, in 15 your view, what -- under what circumstances, 16 could a guarantee be an indirect material 17 interest? 18 A. If the probability that the 19 guarantor may have to make good on the 20 guarantee is more than remote, then you get 21 into that materiality issue. 22 Is this a material interest and is 23 it the kind of interest that was contemplated 24 by the SEC? 25 Q. Does the level of capitalization of</p> |
| <p style="text-align: right;">Page 263</p> <p>1 D. Larue 2 regulation does not provide clear and 3 specific guidelines for the appropriate 4 disclosure of guarantees or CDSs. It's not 5 clear whether L&H would have been required to 6 disclose the promised guarantees or CDSs made 7 by Lernout, Hauspie and Willard in their 8 personal capacities. 9 Q. I understand that, but, 10 unfortunately, I don't think that Dexia is 11 going to have -- attempt to have the SEC come 12 testify, but they are going to attempt to 13 have you come testify, so that's why I'm 14 asking for your understanding. 15 Under what circumstances and your 16 understanding based upon your experience can 17 a guarantee be an indirect material interest, 18 as that term is used in the regulation quoted 19 in paragraph 48 of your report? 20 A. Since the SEC doesn't define what 21 it means by material interest to include 22 guarantees, that would be a subjective 23 determination that could vary from one expert 24 to another as to whether or not that 25 terminology was meant at that time to include</p> | <p style="text-align: right;">Page 265</p> <p>1 D. Larue 2 the entity whose loan guarantee -- is 3 guaranteed effect whether or not it is likely 4 that the guarantee will be called upon? 5 A. It could. 6 Q. Let's turn to page 23 of your 7 report. 8 A. Could I add something? 9 Q. Sure. 10 A. The SEC in its proposed amendments 11 to this regulation under SK was very critical 12 of its own regulation as being unclear and 13 ambiguous and one of the reasons that they 14 proposed these changes was to clarify and try 15 to minimize the amount of ambiguity and I 16 actually cited that later in my report, so 17 even the SEC thought these were pretty 18 ambiguous regulations and undertook to change 19 them. 20 What page? 21 Q. Page 23. 22 If you look at the bottom, one of 23 the facts that you were asked to assume that 24 Radial was a company of limited liability 25 incorporated on May 28, 1998 with a capital</p> |

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| <p style="text-align: right;">Page 266</p> <p>1 D. Larue 2 of 2.5 million Belgium francs by Mr. Frans 3 van Deun? 4 A. Yes, sir. 5 Q. How much in 1998 was 2.5 million 6 francs? 7 A. A good guess is it would be about 8 \$72,000. I don't know what it was. You used 9 that number earlier in our discussion today, 10 but I think it was -- I don't know. 11 Q. Did you ever ask anybody when you 12 were asked to assume this fact, how much is 13 this, is this a hundred million dollars or is 14 it two cents? 15 A. I know I used some of the 16 conversion data that was contemporaneous, not 17 on that specific date, but about that time, 18 to make just a rough calculation. 19 Q. What did you come up with? 20 A. I don't remember. It was probably 21 70 or \$80,000. 22 Q. So you were asked to assume that 23 Artesia loaned \$6 million to a company that 24 was capitalized at \$72,000, correct? 25 A. Basically, that's correct.</p> | <p style="text-align: right;">Page 268</p> <p>1 D. Larue 2 Q. Were you asked to assume whether or 3 not Artesia asked for a personal guarantee 4 from Frans Van Deun? 5 A. I don't know if the bank asked for 6 a personal loan from that individual. I 7 don't know if he received a personal loan. 8 Q. I asked for a personal guarantee. 9 Perhaps my question wasn't clear. Let me 10 restate your question. 11 You were asked to assume that Dexia 12 asked Frans Van Deun to personally guarantee 13 Artesia's loan to Radial. 14 A. I wasn't asked to assume that. 15 Q. And you don't know one way or the 16 other, correct? 17 A. I don't know one way or the other. 18 Q. In your experience, have you ever 19 come across a bank that has obtained a 20 guarantee from executives of the seller of 21 goods where the -- let me change that. 22 Mr. Larue, in your experience, have 23 you ever seen an instance in which a bank has 24 obtained personal guarantees from executives 25 of the selling corporation for a loan that</p> |
| <p style="text-align: right;">Page 267</p> <p>1 D. Larue 2 Q. And you were asked to assume that 3 they loaned that on either the last or next 4 to last business day of L&H's third quarter, 5 correct? 6 A. September 29, 1998. 7 Q. And you were asked to assume 8 that -- well, were you asked to assume that 9 Artesia did any due diligence on Radial's 10 ability to repay Artesia's loan to Radial? 11 A. I don't know what, if anything, 12 Artesia did in terms of doing a due 13 diligence. 14 Q. And were you asked to assume any 15 reason as to why Artesia looked to -- for 16 guarantees from Lernout and Hauspie 17 executives? 18 A. The reason that a bank normally 19 requires or desires a guarantee is to 20 minimize its risk. 21 Q. But why did they look -- do you 22 know why they looked to Lernout and Hauspie 23 executives for those guarantees? 24 A. Why specifically they looked to 25 them? No.</p> | <p style="text-align: right;">Page 269</p> <p>1 D. Larue 2 the bank makes to the buying corporation? 3 MR. BUTLER: Objection to form. 4 A. Have I seen that in my personal 5 experience? 6 Q. And professional experience. 7 A. Personal and professional 8 experience, possibly. 9 Q. Identify it for me, please. 10 A. I would refer to a case that I 11 testified in sometime back. It was what they 12 call a lease strip case and there were a 13 number of guarantees circular flows of cash, 14 installment notes going back and forth. 15 I believe in one or more of those 16 lease strip cases, it may have been that the 17 owners of the seller guaranteed that the debt 18 of the buyer. 19 Q. It may have been, but you don't 20 recall one way or the other? 21 A. If I had time to think about it, 22 those were very, very complicated facts and 23 it's been some time since I testified in that 24 case. I just don't recall, but it may be. 25 Q. So is it fair to say that at most,</p> |

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| <p style="text-align: right;">Page 270</p> <p>1 D. Larue 2 in your entire professional career, you have 3 only come in contact with perhaps one other 4 time in which the executives of the seller 5 guaranteed the loans of the buyer?</p> <p>6 A. I alluded to the fact there were a 7 number of those cases. One went to trial, 8 the other settled prior to trial, so it 9 wasn't just the one case, it was probably 10 three or four that I'm referring to. I don't 11 recall that I've seen this from my personal 12 experience more than in those cases.</p> <p>13 Q. Now, as a director of 14 Microstrategy, if the CEO of Microstrategy 15 guaranteed the loan of any of Microstrategy's 16 customers, do you believe that 17 Microstrategy's investors would be interested 18 in that fact?</p> <p>19 A. Under the new regulations, SK, that 20 would have to be disclosed.</p> <p>21 Q. But I asked a different question. 22 I asked a question of as a director 23 of Microstrategy, it's not a question of 24 whether or not it has to be disclosed. As a 25 director of Microstrategy, if the CEO of</p> | <p style="text-align: right;">Page 272</p> <p>1 D. Larue 2 personal and separate economic benefit or 3 detriment, as long as he accepted the 4 economic risks and obtained all of the 5 economic benefits as a result of that 6 transaction and as long as it was very clear 7 that Microstrategy was under no express or 8 implied obligation to reimburse him in the 9 event of losses and as long as the customer 10 wasn't or didn't have the capacity to become 11 a major competitor as a result of this loan 12 and guarantee, I'm not sure I would have a 13 lot of problems with that other than I would 14 know that under the SEC regulations, that 15 would have to be disclosed.</p> <p>16 Q. Mr. Larue, given your experience as 17 a forensic examiner, is there any reason that 18 you can think of that Messrs. Lernout, 19 Hauspie and Willard would have guaranteed 20 Radial's loan other than to ensure that L&H 21 booked revenue in the third quarter of 1998?</p> <p>22 MR. BUTLER: Objection to form.</p> <p>23 A. It's my understanding that when 24 they ultimately did sell a CDS, that they 25 were entitled to a fee.</p> |
| <p style="text-align: right;">Page 271</p> <p>1 D. Larue 2 Microstrategy made a -- guaranteed a \$6 3 million loan of one of Microstrategy's 4 customers, do you think Microstrategy's 5 investors would want to know that?</p> <p>6 MR. BUTLER: Objection to form.</p> <p>7 A. I think it depends on the facts and 8 circumstances.</p> <p>9 Q. Okay. So there are certain 10 instances in which you think the investors of 11 Microstrategy wouldn't care?</p> <p>12 A. Yes.</p> <p>13 MR. BUTLER: Objection to form.</p> <p>14 Q. Would it matter if the guarantee 15 was on a loan to a company that was 16 capitalized at \$72,000 in 1998?</p> <p>17 A. That might be a fact or 18 circumstance that would be relevant to me.</p> <p>19 Q. Is it a fact or circumstance that's 20 relevant to you?</p> <p>21 A. Could be.</p> <p>22 My concern would be to what extent 23 might Microstrategy be called upon to bear 24 the risk that individually, an officer of the 25 company had chosen to assume for his own</p> | <p style="text-align: right;">Page 273</p> <p>1 D. Larue 2 Q. How much? 3 A. I don't remember. 4 Q. Did you ever know? 5 A. I've seen some reference to that. 6 I can't recall where. 7 Q. And what was the magnitude of that 8 fee? 9 A. I don't remember what it was. 10 Q. Do you have any approximation, a 11 hundred bucks, a million bucks? 12 A. It wasn't a million, it wasn't a 13 hundred bucks. 14 Q. Was it a thousand or a hundred 15 thousand? 16 A. I don't recall. 17 You asked me was there any other 18 fact or circumstance that might motivate 19 somebody like Lernout, Hauspie and Willard to 20 sell a CDS. Yes, there is an economic 21 motive. I assume the risk and I get paid for 22 that. 23 Q. And so any other -- other than 24 trying to make some money, however it may -- 25 MR. BUTLER: Pretty classic</p> |

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| <p style="text-align: right;">Page 274</p> <p>1 D. Larue 2 motivation. 3 Q. However much it may have been, and 4 to ensure that L&H was able to book revenue 5 in the third quarter of 1998, can you think 6 of any other reason that Lernout, Hauspie and 7 Willard would have guaranteed Dexia's loan to 8 Radial? 9 MR. BUTLER: Objection to form. 10 A. Again, I don't know what they were 11 thinking when they made that decision. They 12 could have. I guess anything is possible. 13 They could have believed correctly or 14 incorrectly that there might be a difference 15 between a guarantee that was issued by L&H 16 versus a guarantee that their stockholders 17 had issued. That this would achieve legal or 18 tax or accounting objectives that were 19 different from those that would have resulted 20 if they had structured the transaction 21 differently. 22 It's difficult to anticipate the 23 universe of possibilities correctly or 24 incorrectly that might have gone through 25 someone's mind to motivate them.</p> | <p style="text-align: right;">Page 276</p> <p>1 D. Larue 2 A. I was not asked to assume one way 3 or the other. 4 Q. You don't know whether it was ever 5 put? 6 A. I don't know for a fact. 7 Q. Do you have a belief? 8 A. I believe they were paid something 9 on one of the CDSs, but, honestly, that's a 10 vague recollection. 11 Q. And nothing on the other CDS? 12 A. I don't think I've seen anything 13 one way or the other on the other CDS or 14 other CDSs. 15 It certainly wasn't a basis for 16 forming my opinions. 17 Q. Let's turn to your rebuttal report, 18 which I believe is Larue Exhibit 5. 19 Now, on page 1, you have some 20 paragraphs with regard to shell entity and 21 economic substance, correct? 22 A. Yes, sir. 23 Q. Do you understand the term shell 24 entity? 25 A. I have my conception as to what a</p> |
| <p style="text-align: right;">Page 275</p> <p>1 D. Larue 2 Q. But the notion that they could have 3 achieved different accounting treatment would 4 be wrong, correct, because accounting looks 5 at substance rather than form, correct? 6 A. Well, accounting as a general 7 statement, yes, looks to substance, typically 8 looks to substance rather than form where the 9 two do not comport with one another. 10 However, and this is a big however, 11 GAAP is extremely complex, it has a lot of 12 detailed rules. Sometimes it has very, very 13 bright lines and as I pointed out in my 14 rebuttal report, sometimes the difference 15 between a little bit of difference in form 16 produces a very, very different result under 17 GAAP, even though you have two -- more or 18 less economic equivalents, option A, option 19 B, there is a formal difference, but not 20 really a substantive difference, yet GAAP 21 makes a meaningful distinction of how those 22 transactions are respectfully accounted for. 23 Q. Were you asked to assume whether or 24 not Dexia actually paid Lernout, Willard and 25 Hauspie on the CDS?</p> | <p style="text-align: right;">Page 277</p> <p>1 D. Larue 2 shell entity is. It's not defined under 3 GAAP. 4 Q. Do you have an understanding of 5 what economic substance it? 6 A. Of course. 7 Q. Do you believe that most qualified 8 accountants have an understanding of what 9 economic substance means? 10 MR. BUTLER: Objection to form. 11 A. I would certainly hope so. 12 Q. Now, you talked about your 13 understanding in various places in your 14 rebuttal report, for example, paragraph 9 on 15 page 2. 16 A. Uh-huh -- yes. 17 Q. Does your understanding come -- 18 again, this is what you were asked to assume 19 by Dexia's counsel, correct? 20 A. Well, it comes from my 21 understanding of what I was to assume and the 22 fact that I haven't seen anything that 23 contradicts that understanding. 24 Q. But you didn't search for anything 25 that contradicts, correct?</p> |

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| <p style="text-align: right;">Page 278</p> <p>1 D. Larue 2 A. Yes, sir. 3 Q. In paragraph 11, you take issue 4 with Mr. Love's assertion that the 5 transactions between L&H and the LDCs were 6 not legitimate arm's length transactions, 7 correct? 8 A. Yes. 9 Q. You don't know one way or the 10 other, do you, whether or not the 11 transactions between L&H and the LDCs were or 12 were not legitimate arm's length 13 transactions, correct? 14 A. You'll have to define what you mean 15 by legitimate arm's length transaction. 16 Q. Well, you didn't do anything to 17 investigate the nature of the relationship, 18 the transactions between L&H and LDC, 19 correct. 20 A. I believe it was Mr. Love who 21 asserted that these were not legitimate arm's 22 length transactions. He cites a number or 23 refers to a number of factual assertions to 24 support that statement, but this, what this 25 paragraph does is it points out four things.</p> | <p style="text-align: right;">Page 280</p> <p>1 D. Larue 2 assertions, correct? 3 A. Estimate and were not contradicted 4 by documents that I reviewed, yes. 5 Q. Correct, but you cannot say that 6 you disagree with Mr. Love on the facts 7 following an investigation of the facts, 8 correct? 9 A. Whose investigation? 10 Q. Yours. 11 A. I didn't conduct an investigation. 12 Q. Exactly. So you don't know whether 13 or not the relationships between L&H and LDCs 14 were or were not legitimate arm's length 15 transactions, whatever it means? 16 A. No, I won't agree with that. 17 I don't know with certainty what 18 the underlying facts were. I stated the 19 facts that I've assumed clearly in my report 20 and in my rebuttal report. 21 Based on the facts that I have 22 assumed, do those facts support Mr. Love's 23 conclusion that these were not legitimate 24 arm's length transactions, that these 25 entities were empty shell entities, they were</p> |
| <p style="text-align: right;">Page 279</p> <p>1 D. Larue 2 First of all, there are facts and 3 circumstances that negate the assertion that 4 these were not legitimate arm's length 5 transactions. One of those is the fact that 6 you had independent -- I factually assumed 7 that there were independent investors who had 8 money at stake to varying degrees, depending 9 upon which of the entities we're referring to 10 who were unrelated to Lernout, Hauspie and 11 Willard. 12 I also pointed out on page 3, I 13 have factually assumed that the tools that 14 the LDCs acquired were functional tools that 15 had the inherent capacity to be developed to 16 exploit a market that the LDCs actually had a 17 bonafide enforceable license to exploit and 18 the other things that I have listed in my 19 report. 20 Q. Now, I understand that. I guess -- 21 you said the facts and circumstances 22 undermine Mr. Love's contentions, correct? 23 What you really meant was that the 24 assumptions that you were asked to make by 25 Dexia's counsel undermine Mr. Love's</p> | <p style="text-align: right;">Page 281</p> <p>1 D. Larue 2 shams and had no economic substance? 3 Some facts may support that. Other 4 facts detract from that. That's what I 5 pointed out here. He makes a factual 6 assertion that there were no assets in those 7 LDCs and I don't -- the fact that I've 8 assumed indicate that the LDCs did, in fact, 9 have rights that had value. 10 Q. But you haven't even made a factual 11 assertion, you just repeated assumptions, so 12 when you say the fact, what you mean is my 13 assumptions, correct? 14 A. My factual assumptions for which I 15 have not found documents that would indicate 16 otherwise and which were not rebutted in his 17 rebuttal report. 18 Q. Is it fair to say that you don't 19 find something unless you look for it? 20 MR. BUTLER: Objection to form. 21 Mr. Love looked for it. He didn't find 22 it either. 23 A. I've stated the facts on which I 24 base my opinions. 25 Q. Let me try my question again.</p> |

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| <p style="text-align: right;">Page 282</p> <p>1 D. Larue 2 Is it true that you don't find 3 something unless you look for it? 4 A. Unless you look for it or you're 5 provided with information about it, 6 especially when that information has been 7 indirectly validated by another source. 8 Q. What other source? 9 A. I don't believe that Mr. Love, in 10 his rebuttal report, takes issue with any of 11 the facts I represented in my report that I 12 was relying upon. 13 Q. By not taking issue with it, you're 14 saying he is confirming them? 15 A. No, I'm not saying he is confirming 16 them. I would have expected if I had made a 17 mistake or had a misunderstanding of a 18 material fact on which I based my opinion and 19 stated clearly in my report that he would 20 have made mention of that in his rebuttal 21 report. 22 Q. Don't you think he is entitled to 23 assume that you are entitled to assume 24 whatever you want to assume, all you would 25 say is I just assumed it, I'm not saying it's</p> | <p style="text-align: right;">Page 284</p> <p>1 D. Larue 2 MR. BUTLER: This sarcasm has no 3 place. Stop. Stop. Stop. 4 MR. HARRIS: Are you instructing 5 him not to answer it? Then instruct him 6 not to answer it. That's what you are 7 entitled to do. 8 MR. BUTLER: You are not entitled 9 to use that tone of voice and sarcasm. 10 You've gone around and around on this. 11 His answers have all been consistent and 12 so I object to the tone you were using 13 with this witness. 14 Q. What is the basis of your belief 15 and understanding that the record will bear 16 out as true the assumptions that you set 17 forth in your report? 18 A. Several reasons. One is that the 19 complaints that I referred to in Exhibit 3 of 20 my report, which I believe are on the other 21 side of this issue, basically disclose or 22 make these representations in that 23 representation of the underlying facts and 24 circumstances. That's part. 25 The other thing, quite frankly,</p> |
| <p style="text-align: right;">Page 283</p> <p>1 D. Larue 2 right or wrong, I just assumed it because 3 that's been your testimony here today, 4 correct? 5 A. Mr. Love can write his rebuttal 6 report any way he sees fit. I would have 7 expected that if there were significant 8 factual misstatements in my report, however 9 well intended, that he would have observed -- 10 made observations about that and would have 11 addressed or would have opined as to how that 12 might have factored in my opinion. 13 Q. I just want to make clear, there 14 were no factual statements or misstatements 15 in your report. There were simply statements 16 of what you were asked to assume, correct? 17 A. I was asked to assume facts that it 18 is my belief and understanding will be borne 19 out by the record. 20 Q. And what is your belief and 21 understanding based on, the extensive 22 discovery that you've read? 23 MR. BUTLER: Objection to form. 24 Q. I forgot you didn't read a single 25 deposition transcript.</p> | <p style="text-align: right;">Page 285</p> <p>1 D. Larue 2 what possible benefit would counsel have had 3 in misrepresenting facts to me at the end of 4 the day. These facts will -- the facts upon 5 which I relied will be established as being 6 either accurate or not accurate. 7 Why ask me to write a report based 8 on facts known to be contradictory to the 9 actual facts in this case. That doesn't make 10 sense to me. 11 Q. It didn't make sense to us either, 12 but it happened. 13 MR. BUTLER: I object to the 14 commentary. I obviously disagree with 15 your commentary and I think it's 16 inappropriate for you to give commentary 17 to the answers. I think you should just 18 ask questions. 19 MR. HARRIS: We had this 20 discussion. You disagree with what I'm 21 supposed to do and I disagree with what 22 you've done, but you haven't paid any 23 attention. You want to do it the way 24 you want to do it, whether it's proper 25 or not.</p> |

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| <p style="text-align: right;">Page 286</p> <p>1 D. Larue 2 MR. BUTLER: You have about six 3 minutes left by my clock. 4 A. The facts I have been asked to 5 assume have not been contradicted by any of 6 the documents I looked at and I looked at a 7 lot of documents, a small percentage of the 8 underlying documents, but as you can see from 9 Exhibit 3, it's a rather lengthy list and, 10 fourth, I can't speak for Mr. Love and how he 11 goes about preparing rebuttal reports, but 12 certainly one of the things that I would do 13 and have done is if I were rebutting someone 14 else's report and I saw a fact that I knew or 15 believed to be incorrect and if that fact 16 were a basis upon which the opposing expert 17 based their opinion, it would be something 18 that I would address in my report and, 19 frankly, I would have expected someone to 20 address that in my report that's one reason 21 for the transparency of my report.</p> <p>22 Q. Mr. Larue, did the complaint by the 23 SEC against Lernout and Hauspie Speech 24 Products, Exhibit 3, undermine the factual 25 assumptions that you were asked to make in</p> | <p style="text-align: right;">Page 288</p> <p>1 D. Larue 2 support Mr. Love's assertion or support the 3 facts you were asked to assume about the 4 LDCs?</p> <p>5 MR. BUTLER: Objection to form. 6 A. Let me clarify, and I wasn't clear 7 before, when I said document, I didn't mean 8 someone else's opinion or someone's 9 secondhand interpretation of the underlying 10 facts and circumstances and I wasn't clear 11 about that.</p> <p>12 When I said document, I meant the 13 Bates numbered documents listed in Exhibit 3.</p> <p>14 Q. Now, I believe in your rebuttal 15 report, you say there is no evidence that 16 you're aware of that suggests Lernout, 17 Hauspie or Willard controlled or managed any 18 of the LDCs, correct?</p> <p>19 A. Where do I say that?</p> <p>20 THE VIDEOGRAPHER: I was asked to 21 mention for the record, it's 5:04, seven 22 hours into the deposition.</p> <p>23 MR. BUTLER: Let's wrap it up. If 24 you can finish quickly, we appreciate it 25 because he has a plane to catch.</p> |
| <p style="text-align: right;">Page 287</p> <p>1 D. Larue 2 your complaint, in your review? 3 MR. BUTLER: Objection to form. 4 A. I would need to read that 10-page 5 document from start to finish and my report 6 again to know.</p> <p>7 Q. I see. So -- 8 A. And I would also refer back to our 9 earlier conversation.</p> <p>10 My understanding is these are 11 allegations that have not been definitively 12 established or adjudicated, if that's the 13 right term.</p> <p>14 I don't know who wrote this report. 15 I don't know how much time and effort went 16 into preparing this report. I don't know how 17 many of the 1.5 million documents that are 18 apparently out there were reviewed by the 19 people who drafted this report. There are a 20 lot of things I don't know, so I don't know.</p> <p>21 Q. I was just focusing, you said you 22 saw no document that undermined any of the 23 factual assumptions.</p> <p>24 Does the SEC's allegation that the 25 LDCs were little more than shell companies</p> | <p style="text-align: right;">Page 289</p> <p>1 D. Larue 2 MR. HARRIS: It's either about the 3 seven hours or not. Do you want to 4 continue or end it?</p> <p>5 MR. BUTLER: You said you were 6 willing to live within seven hours. 7 Do you need more time?</p> <p>8 MR. HARRIS: I'm willing to play by 9 the rules of the court and so if you are 10 insisting upon that I end in seven 11 hours, that's fine.</p> <p>12 MR. BUTLER: I'm not insisting. I 13 will talk about it with you. We need to 14 leave to catch a plane, so if you have 15 one or two more questions, otherwise, 16 let's go off the record.</p> <p>17 Q. If you look at page 5 of your 18 rebuttal report, in paragraph 20, you say, 19 Mr. Love asserts that under GAAP, the LDCs 20 were related parties to L&H because of the 21 extensive role played by L&H and its 22 principal shareholders and senior officers in 23 creating and financing these companies. 24 Do you see that?</p> <p>25 A. I do.</p> |

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| <p style="text-align: right;">Page 290</p> <p>1 D. Larue</p> <p>2 Q. Is Mr. Love's assertion in your 3 view that L&H played an extensive role and 4 its senior shareholders and officers in 5 creating and financing the LDCs accurate?</p> <p>6 MR. BUTLER: Objection to form.</p> <p>7 A. Unfortunately, here, as throughout 8 most of that report, there is no citation or 9 authority that he relies on in making that 10 assertion.</p> <p>11 It wasn't possible for me to check 12 Bates stamp numbers or look at the 13 documentation that he was apparently relying 14 on in making an independent assessment as to 15 whether or not that documentation supported 16 or detracted from his opinion here.</p> <p>17 He also doesn't define role and I 18 would point out that there is GAAP, there is 19 TPA 5100.63 -- I think it's 64, that 20 explicitly states that -- I'll -- that 21 permits basically involvement in the 22 facilitation of financing without that being 23 considered prohibited management activity.</p> <p>24 Q. Do you have any facts -- are you 25 aware of any facts that suggest Mr. Love's</p> | <p style="text-align: right;">Page 292</p> <p>1 D. Larue</p> <p>2 know whether here, you considered \$72,000 to 3 be a substantial amount that was contributed 4 by the respective owners and investors of the 5 LDCs?</p> <p>6 A. You suggested I apply a GAAP 7 materially standard in a context of why I 8 take an exception to his reference to these 9 entities as being empty and with no assets. 10 That's not what I've done here. He makes 11 this statement. We're not talking about GAAP 12 materiality. He made the representation that 13 these were empty shell entities with no 14 assets. That does not comport with my 15 understanding of the fact.</p> <p>16 My understanding of the facts is 17 that Radial had some capitalization from 18 independent investors. My understanding is 19 that LIC had more and that some of the -- 20 there were loans guaranteed by Mr. Hardeman 21 and assets, personal assets of Mr. Hardeman 22 that were pledged for the Artesia loan and 23 it's also my understanding that LDF had a 24 substantial amount of capital, debt capital 25 or equity capital from sources other than</p> |
| <p style="text-align: right;">Page 291</p> <p>1 D. Larue</p> <p>2 statement that you quote there is inaccurate?</p> <p>3 A. I didn't assert this statement.</p> <p>4 Q. I take it the answer is no?</p> <p>5 MR. BUTLER: Objection to form.</p> <p>6 A. Again, my comment here is the fact 7 that he didn't support his conclusion, I 8 don't know whether that statement is true or 9 not.</p> <p>10 Q. If you look at page 3, paragraph 11 13-A, you say, It's my understanding that the 12 respected owners/investors of the LDCs 13 contributed substantial amounts of cash to 14 them at the time of their formation and, in 15 some cases, guaranteed loans or pledged 16 personal assets to secure loans made to these 17 entities, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Is it your -- do you consider the 20 \$72,000 that was used to capitalize Radial to 21 be a substantial amount?</p> <p>22 A. It would be to me.</p> <p>23 Q. I understand that it would be to 24 you, but you're a professor and you're not an 25 auditor or something like that, but I want to</p> | <p style="text-align: right;">Page 293</p> <p>1 D. Larue</p> <p>2 Artesia.</p> <p>3 It's also my understanding that 4 these entities had, you know, real licenses 5 and real tools with which to develop those 6 licenses or to sell to someone else.</p> <p>7 For his statement -- his repeated 8 statement that these are empty shell entities 9 with no assets, that doesn't comport with my 10 understanding of the underlying facts and 11 that's the point that I've made here.</p> <p>12 Q. I didn't ask about that. I asked 13 about paragraph 13-A.</p> <p>14 A. That's what I'm talking about. I'm 15 sorry.</p> <p>16 Q. Do you --</p> <p>17 MR. BUTLER: Just a second.</p> <p>18 Q. Do you consider \$72,000 to be a 19 substantial amount?</p> <p>20 MR. BUTLER: We have to go to catch 21 this man's plane. You're continuing, 22 but we're past seven hours, so I think 23 we should go off the record.</p> <p>24 MR. HARRIS: Is this concluded?</p> <p>25 MR. BUTLER: We're concluded.</p> |

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| <p style="text-align: right;">Page 294</p> <p>1 D. Larue 2 THE VIDEOGRAPHER: This concludes 3 today's proceeding of the deposition of 4 David Larue. 5 The total number of videotapes used 6 was four. 7 The time is 5:10. 8 (Time noted: 5:10 p.m.)</p> <p>10 <u>DAVID LARUE</u></p> <p>13 Subscribed and sworn to before me 14 this ____ day of _____, 2007.</p> | <p style="text-align: right;">Page 296</p> <p>1 -----INDEX----- 2 WITNESS EXAMINATION BY PAGE 3 DAVID LARUE MR. HARRIS 7</p> <p>6 -----INFORMATION REQUESTS----- 7 REQUESTS: PAGE / LINE 8 31 15</p> <p>10 -----EXHIBITS----- 11 LARUE FOR ID. 12 1 Curriculum vitae of David 8 13 Larue 14 2 Form 10-K 12 15 3 U.S. Securities and Exchange 64 16 Commission document 17 4 Copy of report of David Larue 105 18 5 Rebuttal report 193 19 6 Document dated September 29, 233 20 1998</p> |
| <p style="text-align: right;">Page 295</p> <p>1 2 C E R T I F I C A T E 3 STATE OF NEW YORK) 4 : ss. 5 COUNTY OF NEW YORK) 6 7 I, LESLIE FAGIN, a Notary Public 8 within and for the State of New York, do 9 hereby certify: 10 That DAVID LARUE, the witness whose 11 deposition is hereinbefore set forth, was 12 duly sworn by me and that such deposition 13 is a true record of the testimony given 14 by the witness. 15 I further certify that I am not 16 related to any of the parties to this 17 action by blood or marriage, and that I 18 am in no way interested in the outcome of 19 this matter. 20 IN WITNESS WHEREOF, I have hereunto 21 set my hand this 26th day of March, 2007. 22 23 24 <u>LESLIE FAGIN, RPR</u> 25</p> | |